



PUBLIC NOTICE

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OEA AND WTB ADDRESS A REQUEST FOR REVISIONS TO THE AUCTION 108 (2.5 GHz BAND) INVENTORY, AND REMIND PARTICIPANTS OF THEIR DUE DILIGENCE RESPONSIBILITIES AND OBLIGATIONS RELATED TO THE PROHIBITION AGAINST CERTAIN COMMUNICATIONS

AU Docket No. 20-429

1. By this Public Notice, the Office of Economics and Analytics (OEA) and the Wireless Telecommunications Bureau (WTB) address a recent *ex parte* filing concerning the revised license inventory for Auction 108 that suggested that “additional adjustments” to the inventory should be made based on the filer’s analysis.¹ After reviewing the *ex parte* filing, we decline to adjust the current inventory of licenses. Furthermore, we do not anticipate any need to publish further revisions to the inventory, except for changes that may be required by disposition of pending Rural Tribal Priority Window (RTPW) applications.

2. Extensive review of the current license data already has been conducted, and potential bidders have been advised to conduct their own further due diligence with respect to any offered licenses that are of interest to them, especially in light of the fact that the amount of unassigned area or unassigned spectrum for some licenses is very small. We here reiterate our guidance regarding due diligence by potential bidders and, in addition, remind covered parties of their obligations under the prohibition against certain communications not to disclose an applicant’s interest in specific licenses in the auction inventory.² That prohibition will come into effect at the deadline for filing short-form applications to participate in Auction 108, which is on May 10, 2022, at 6:00 p.m. Eastern Time (ET).³

3. On March 21, 2022, the Commission released a Public Notice establishing the procedures to be used for Auction 108, along with a listing of all county and channel block combinations for approximately 8,000 new flexible-use geographic overlay licenses for unassigned spectrum in the 2.5 GHz band.⁴ The Commission also made available a new mapping tool to help identify and view existing licenses and pending applications to assist applicants in conducting due diligence research regarding potential encumbrances in the band.⁵ The mapping tool is available under the Education tab on the Auction 108 website at www.fcc.gov/auction/108. On April 15, 2022, OEA and WTB released a

¹ Letter from Steve B. Sharkey, Vice President, Technology and Engineering Policy, T-Mobile, to Marlene H. Dortch, Secretary, FCC, AU Docket No. 20-429 (filed Apr. 26, 2022).

² See generally *Auction of Flexible-Use Licenses in the 2.5 GHz Band for Next-Generation Wireless Services; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments, and Other Procedures for Auction 108; Bidding Scheduled to Begin July 29, 2022*, AU Docket No. 20-429, Public Notice, FCC 22-24 (Mar. 21, 2022) (modified by Erratum (OEA/WTB Apr. 1, 2022)) (*Auction 108 Procedures Public Notice*).

³ *Id.* at 12, 24, paras. 22, 62.

⁴ See generally *id.*

⁵ *Id.* at 9, para. 17.

Public Notice updating the inventory listing of new overlay licenses.⁶ That Public Notice has been posted on the Auction 108 website, and those revisions have been incorporated into the Commission's mapping tool.

4. We remind interested parties that they must conduct their own due diligence regarding Auction 108 licenses when determining the suitability of any particular license for any particular use. The revised listing of available licenses reflects a careful application of the *Auction 108 Procedures Public Notice* criteria.⁷ The reported data is not, however, a representation with respect to the suitability of any available spectrum for any particular use. Consequently, interested parties must rely on their own due diligence for purposes of participating in the auction.

5. As noted in the *Auction 108 Auction Procedures Public Notice*: "The extent to which the available white space in the overlay licenses is considered useful or available by any particular bidder may vary greatly, depending upon the specific business plans of the bidder, the likelihood of existing encumbrances being removed, and whether the bidder is the licensee or lessee of the encumbering spectrum."⁸ A substantial number of licenses in the Auction 108 inventory have very small amounts of unassigned area or unassigned spectrum. The details in each case may or may not be of significance to a potential use of the spectrum. Interested parties therefore should consult the Universal Licensing System (ULS) to confirm all information in the mapping tool and to determine the amount of white space available.

6. We further remind interested parties that pending applications filed in the Rural Tribal Priority Window may affect the final licenses available for bidding in Auction 108. Licenses granted through applications received during the RTPW will have incumbent status vis-à-vis licenses awarded in Auction 108.⁹ In other words, any winning bidder awarded a license in Auction 108 will not be allowed to operate within the license area of a successful RTPW applicant, even if that RTPW application remains pending at the time of issuance of the overlay license. In the event that the grant of a Rural Tribal Priority Window application results in a county/channel block combination having no unassigned spectrum, the Commission will announce the removal of the affected license(s) from the auction inventory.

7. We caution parties subject to the Commission's prohibition against certain communications to consider the risks posed by any communications regarding specific licenses in Auction 108 once the prohibition is in effect. The prohibition will come into effect at the deadline for filing short-form applications to participate in Auction 108, which is on May 10, 2022, at 6:00 p.m. ET. The *Auction 108 Procedures Public Notice* describes in detail the rule that prohibits a covered party from "communicating . . . in a manner the substance of their own, or each other's, or any other applicants' bids or bidding strategies."¹⁰

⁶ See generally *Revision of Inventory for Auction of Flexible-Use Licenses in the 2.5 GHz Band for Next-Generation Wireless Services (Auction 108)*, AU Docket No. 20-429, Public Notice, DA 22-419 (April 15, 2022) (*Auction 108 Revised Inventory Public Notice*).

⁷ Staff has analyzed the county/channel combinations that T-Mobile believes should be removed from inventory and concluded that the licenses for those counties and channels are properly in inventory. For the counties in Georgia, South Carolina, and Texas identified by T-Mobile, the cancellation of licenses after January 10, 2005 (the date geographic service areas were created), created unassigned spectrum in those counties and channels. For the counties in Indiana, North Dakota, South Dakota, and Oklahoma, our analysis shows that shapefiles of certain incumbent licenses do not line up precisely with county boundaries. As a result, there is unassigned spectrum in those counties and channels. A channel block/county combination is considered unavailable, and is therefore not included in the inventory, only if more than 99.9999% of the area within the county is fully encumbered by an existing license for that channel block. See *Auction 108 Procedures Public Notice* at 7, para. 8, n.26.

⁸ *Auction 108 Procedures Public Notice* at 53, para. 157.

⁹ *Id.* at 14, para. 9.

¹⁰ See 47 CFR § 1.2105(c).

8. As noted in the *Auction 108 Procedures Public Notice*, the prohibition against communicating “in any manner” includes public disclosures as well as private communications and indirect or implicit communications. Accordingly, communications in a Commission docket regarding specific Auction 108 licenses that may reflect an interest in bidding (or not bidding) on those licenses could violate the prohibition, or, at a minimum, raise questions regarding potential violations that could require making a report to the Commission and that might delay post-auction licensing of parties making the communication.

9. In light of the extensive review already conducted of the current data regarding the licenses offered in Auction 108, we do not anticipate any further need for parties to communicate with the Commission regarding the licenses or their related data. However, in the event a party concludes that it needs to make such a communication during the time when the prohibition against certain communication applies, the party may do so without disclosing to the public its interest in particular licenses and, potentially, to other covered parties. In such a circumstance, a party should consider submitting any communication to the Commission with a request that it or relevant portions of it be withheld from public inspection by following the procedures specified in section 0.459 of the Commission’s rules.¹¹

10. As always, interested parties should review the *Auction 108 Procedures Public Notice*, which details available information regarding offered licenses and the prohibition on communications, along with application requirements, minimum opening bids, upfront payments, and other procedures for Auction 108.

11. For further information concerning this proceeding, contact the offices listed below:

Broadband Division, Wireless Telecommunications Bureau

2.5 GHz band questions: Madelaine Maior or Nadja Sodos-Wallace at (202) 418-2487

Inventory questions: John Schauble at (202) 418-0797

Auctions Division, Office of Economics and Analytics

Auction legal questions: Lyndsey Grunewald or Scott Mackoul at (202) 418-0660

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¹¹ See *id.* § 0.459.